Action brought on 18 June 2009 — Commission of the European Communities v Republic of Poland

(Case C-223/09)

(2009/C 233/03)

Language of the case: Polish

Parties

Applicant: Commission of the European Communities (represented by: O. Beynet and M. Kaduczak, Agents)

Defendant: Republic of Poland

Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to ensure the implementation of Directive 2005/89/EC of the European Parliament and of the Council of 18 January 2006 concerning measures to safeguard security of electricity supply and infrastructure investment, [1] or in any event by failing to inform the Commission that it had adopted such provisions, the Republic of Poland has failed to fulfil its obligations under that directive;

— order the Republic of Poland to pay the costs.

Pleas in law and main arguments

The period within which Directive 2005/89/EC had to be transposed expired on 24 February 2008. At the time when the present action was brought, the defendant had not adopted the measures necessary to transpose that directive, or in any event had not informed the Commission of such measures.

[1] OJ 2006 L 33, p. 22.

Action brought on 24 June 2009 — Commission of the European Communities v Republic of Poland

(Case C-228/09)

(2009/C 233/04)

Language of the case: Polish

Parties

Applicant: Commission of the European Communities (represented by: D. Triantafyllou and A. Stobiecka-Kuik, acting as Agents)

Defendant: Republic of Poland

Form of order sought

— declare that, by including the amount of the 'opłata rejestracyjna' (registration charge) within the taxable amount for VAT levied in Poland on the supply, intra-Community acquisition or import of a passenger car, the Republic of Poland has failed to fulfil its obligations under Articles 78, 79, 83 and 86 of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax; [1]

— order the Republic of Poland to pay the costs.

Pleas in law and main arguments

The plea advanced in the present case concerns the Republic of Poland's inclusion of the amount of the registration charge in the taxable amount for VAT when the supply, intra-Community acquisition and import of unregistered passenger cars take place in that Member State.

In the Commission's view, there is a fundamental similarity between the Polish tax/charge at issue in the present case and the Danish tax/charge in Case C-98/05 *De Danske Bilimportører*. In that case, the Court held that the relevant tax/registration charge does not fall within the taxable amount for VAT.

The Commission takes the view that the operation of the Polish registration charge in the case of successive transactions concerning the same vehicle prior to its registration shows that it is in essence a registration tax/charge, and not a tax on sales as the Republic of Poland maintains. The taxable person can deduct the amount of the registration charge from the amount of tax chargeable. This means that ultimately, through the system of deduction of the tax paid previously, the tax/charge is levied only once.

The Commission does not concur with the Republic of Poland's argument that the person liable for payment of the registration charge is the seller, the intra-Community acquirer or the importer of the vehicle and not the person in whose name the car is registered.

[1] OJ 2006 L 347, p. 1.

Reference for a preliminary ruling from the Najvyšší súd Slovenskej republiky (Slovakia) lodged on 3 July 2009 — Lesoochranárske Zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky

(Case C-240/09)

(2009/C 233/05)

Language of the case: Slovak

Referring court

Najvyšší súd Slovenskej republiky

Parties to the main proceedings

Applicant: Lesoochranárske Zoskupenie VLK

Defendant: Ministerstvo životného prostredia Slovenskej republiky

Questions referred

1. Is it possible to recognise Article 9 and in particular Article 9(3) of the Aarhus Convention, given that the principal objective pursued by that international treaty is to change the classic definition of *locus standi* by according the status of a party to proceedings to the public, or the public concerned, as having the direct effect of an international treaty ('self-executing effect') in a situation where the European Union acceded to that international treaty on 17 February 2005 but to date has not adopted Community legislation in order to transpose the treaty concerned into Community law?

2. Is it possible to recognise Article 9 and in particular Article 9(3) of the Aarhus Convention, which has become a part of Community law, as having the direct applicability or direct effect of Community law within the meaning of the settled case-law of the Court of Justice?

3. If the answer to the first of the second question is in the affirmative, is it then possible to interpret Article 9(3) of the Aarhus Convention, given the principal objective pursued by that international treaty, as meaning that it is necessary also to include within the concept 'act of a public authority' an act consisting in the delivery of decisions, that is to say, that the right of public access to judicial hearings intrinsically also includes the right to challenge the decision of an administrative body, the unlawfulness of which lies in its effect on the environment?

Reference for a preliminary ruling from the Verwaltungsgericht Halle (Germany) lodged on 3 July 2009 — Günter Fuβ v Stadt Halle (Saale)

(Case C-243/09)

(2009/C 233/06)

Language of the case: German

Referring court

Verwaltungsgericht Halle

Parties to the main proceedings

Applicant: Günter Fuβ

Defendant: Stadt Halle (Saale)

Questions referred

1. Is the concept of detriment in Article 22(1)(b) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 [1] concerning certain aspects of the organisation of working time to be construed objectively or subjectively?

2. Is there detriment within the meaning of Article 22(1)(b) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time if, as a result of having requested that the maximum working time in future be complied with, an employee in the on-call service is transferred, against his will, to a different post that largely involves office duties?

3. Is a fall in remuneration to be construed as detriment within the meaning of Article 22(1)(b) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time if, as a result of the transfer, fewer unsocial hours (nights, Sundays and public holidays) are worked and the amount of the hardship allowance paid in respect of such hours is therefore also reduced?

4. In the event that the second or third questions are answered in the affirmative: can detriment resulting from a transfer be offset by other advantages inherent in the new post, such as shorter working hours or further training?

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[1] OJ 2003 L 299, p. 9.

Action brought on 3 July 2009 — Commission of the European Communities v Federal Republic of Germany

(Case C-244/09)

(2009/C 233/07)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: R. Lyal and W. Mölls, acting as Agents)

Defendant: Federal Republic of Germany

Form of order sought

— Declare that, by restricting decreasing balance depreciation for wear and tear under Paragraph 7(5) of the Law on Income Tax (Einkommensteuergesetz) to buildings located in Germany, the Federal Republic of Germany has failed to fulfil its obligations under Article 56 EC;

— order the Federal Republic of Germany to pay the costs.

Pleas in law and main arguments

The present action concerns the provisions of the German Law on Income Tax (Einkommensteuergesetz) whereby the 'decreasing balance depreciation for wear and tear' — that is, the use of depreciation rates higher than those used for straight line depreciation during the early stages of the depreciation period — which is provided for in the fiscal treatment of immovable property is restricted to buildings located in Germany.

This difference in the treatment of immovable property located in and outside Germany is, it is claimed, contrary to the free movement of capital guaranteed under Article 56 EC. According to settled case-law, Article 56 EC prohibits all measures which